IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

W.P.Nos.26785 and 28135 of 2004
and W.P.M.P.Nos.32616 and 34171 of 2004

M/s.Cochin Chemicals and Rubber Products
Erumbukkadu
Kanyakumari District
rep. by D.Sasidharan Nair. .. Petitioner in both WP's

versus

1. The Registrar
The Tamil Nadu Taxation Special Tribunal
Singaravelar Maligai
Chennai-1.

2. The Appellate Assistant Commissioner (CT)
Tirunelveli.

3. The Deputy Commercial Tax Officer
Nagercoil Rural
Kanyakumari District. .. Respondents in both the WP's

PRAYER: Writ petitions under Article 226 of the Constitution of India praying for the relief of issuance of writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in O.P.Nos.735 and 736 of 2002 dated 5.8.2002 respectively, quash the same and further direct the second respondent to take the appeals on file and dispose of the same on merits.

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For appellant : Mr.Naveen Durai Babu
For respondents : Mr.R.Tholkappian
Govt. Advocate (Taxes)

ORDER
(Order of the Court was made by CHITRA VENKATARAMAN,J.)

The writ petitions are filed against the orders of the Tamil Nadu Taxation Special Tribunal dismissing the original petitions filed by the

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petitioner challenging the order of the first appellate authority wherein the appeals filed by the petitioner against the revised assessment orders were rejected on the ground that the delay in filing the appeals could not be condoned as the appeals were sought to be filed beyond the statutory period prescribed under Section 31(1) of the Tamil Nadu General Sales Tax Act.

2. It is seen from the records that assessment orders for the assessment years 1994-95 and 1995-96 were served on the assessee on 30.3.2000 and 11.10.2000 respectively. The assessing authority took proceedings for recovery of the tax by notice dated 21.5.2001. It is seen that the assessee preferred a petition before the Tamil Nadu Taxation Special Tribunal in O.P.No.142 of 1998 for a direction to the Enforcement Wing Authority to return the Form XVII and C Forms. By the order of the Special Tribunal dated 11th March 1998, the books and records secured at the time of inspection on 7.8.1996 were directed to be returned. In the meanwhile, by order dated 10.7.1998, the appellate authority allowed the appeal against the assessment for the year 1994-95 and remanded the assessment to the Assessing Officer so as to enable the assessee to produce Form XVII for consideration before the Assessing Officer.

3. Once again, an order of assessment was passed on 29.9.2000. Again the assessee approached the Tamil Nadu Taxation Special Tribunal for service of certified copy of the order. By order dated 26.6.2001 in O.P.No.451 of 2001, the Tamil Nadu Taxation Special Tribunal directed furnishing of the certified copy of the assessment order. The same was served on him on 29.8.2001.

4. W.P.No.28135 of 2004 relates to the assessment year 1995-96. Here, a best of judgment was passed on 30.5.2000 on the basis of seized materials. The assessee approached the Tamil Nadu Taxation Special Tribunal alleging that the assessee was not served with copy of the assessment order. The Tamil Nadu Taxation Special Tribunal directed the furnishing of the same. Accordingly, the petitioner received the same on 29.8.2001. The assessee preferred appeals only on 30.4.2002. With the result, when the appeals were sought to be preferred before the Assistant Appellate Commissioner, the papers were returned in L.Dis.1109/02 dated 2.5.2002 on the ground that the delay in filing the appeals could not be condoned as the appeals were filed beyond the period of 60 days prescribed in the statute. Aggrieved by the same, the assessee preferred original petitions before the Tamil Nadu Taxation Special Tribunal. By order dated 5.8.2002, the Tribunal rejected the petitions on the ground that the delay beyond the prescribed period of 60 days under Section 31(1) could not be condoned. Aggrieved by the same, the assessee has preferred the present writ petitions contending that the dismissal of the original petitions by the Tamil Nadu Taxation Special Tribunal may not be sustainable.

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5. The assessee took the plea that the appeals could not be preferred on time due to his poor health, and hence, he prayed for setting aside the order of the Tribunal.

6. A perusal of the orders of the Tribunal along with the order passed by the authorities below would show that the records seized by the Enforcement Wing authorities were returned back to the assessee and the assessee had also stated in their letter dated 14.9.1998 to the assessing authority that the records received back from the Enforcement Officers were available with them. However, on account of the assessee not producing the relevant records, particularly with reference to Form XVII, the assessment was confirmed on best of judgment fixing the tax liability for the assessment year 1994-95 in a sum of Rs.25,465/- towards tax; Rs.5,514/- towards surcharge; Rs.3,021/- towards additional tax; and Rs.34,471/- towards penalty; totalling to a sum of Rs.68,470/-; and relating to the assessment year 1995-96, fixing the tax liability in a sum of Rs.4,261/- towards tax; Rs.637/- towards surcharge; and Rs.27,508/- towards penalty.

7. It is no doubt true that the appeals preferred were beyond the condonation period. Yet, considering the fact that the dispute involved in these writ petitions is with reference to claim on concessional levy of tax, this Court feels that in the interest of justice, the petitioner be given an opportunity to agitate the assessments before the assessing authority. Hence, the impugned orders of the Tribunal are set aside on condition that the tax disputed in the writ petitions shall be paid by the assessee within a period of two weeks from the date of receipt of a copy of this order. The records pertaining to the claim of concessional levy of tax should be produced by the petitioner before the assessing authority thereafter within a period of two weeks. On such production of records, the assessing officer is directed to proceed further and complete the assessment in accordance with law. In the event of non-payment of the tax disputed relating to the aforesaid two assessment years within the time stated above, the orders passed by the Tamil Nadu Taxation Special Tribunal shall stand confirmed.

8. By order dated 21.9.2004 made in W.P.M.P.No.32616 of 2004 in W.P.No.26785 of 2004, this Court directed the petitioner herein to deposit a sum of Rs.10,000/- within four weeks from the date of receipt of copy of the order. If the petitioner had already paid the said amount of Rs.10,000/- as per the orders of this Court, then the same should be given credit to and the balance of the tax components shall be deposited within two weeks from the date of receipt of a copy of this order. In W.P.M.P.No.34171 of 2004, by order dated 30.9.2004, the petitioner was directed to pay the tax, surcharge and additional tax and deposit 50% of the penalty for the assessment year 1995-96 within a period of four weeks from the date of receipt of copy of the order. If any such amount had

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already been deposited, the same should be given credit to and the balance payment be complied with by the petitioner as directed above.

With these observations, the writ petitions are disposed of. Consequently, the connected W.P.M.Ps. are closed. No costs.

krr/

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:
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The Tamil Nadu Taxation Special Tribunal
Singaravelar Maligai
Chennai-1.

2. The Appellate Assistant Commissioner (CT)
Tirunelveli.

3. The Deputy Commercial Tax Officer
Nagercoil Rural
Kanyakumari District.

+ 2 cc to Mr D. Naveen Durai Babu, Advocate sR 58407, 48408
+ One cc to The Spl Govt Pleader (Tax)
KA (co)
sg 06/11/07

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Dated: 19.09.2007

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